

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CHARLES BURGIN,

Plaintiff,

v.

Civil No.: 15-CV-0201S

BUFFALO BOARD OF EDUCATION, FORMER
BUFFALO PUBLIC SCHOOLS SUPERINTENDENT
PAMELA C. BROWN, ASSOCIATE
SUPERINTENDENT BUFFALO PUBLIC SCHOOLS
WILL KERESZTES, DIRECTOR OF SOCIAL STUDIES
BUFFALO PUBLIC SCHOOLS CHARLES BRANDY,
INTERIM SUPERINTENDENT BUFFALO PUBLIC
SCHOOLS DONALD A. OGILVIE, PRESENT
BUFFALO BOARD OF EDUCATION JAMES M.
SAMPSON, BOARD OF EDUCATION MEMBER
CARL PALADINO, BOARD OF EDUCATION
MEMBER LAWRENCE QUINN, BOARD OF
EDUCATION MEMBER PATRICIA PIERCE, BOARD
OF EDUCATION MEMBER THERESA HARRIS-TIGG,
BOARD OF EDUCATION MEMBER BARBARA
SEALS NEVERGOLD, FORMER CHAIRMAN AND
EXECUTIVE DIRECTOR OF UNITED BLACK MEN'S
THINK TANK OF BUFFALO, L. NATHAN HARE,

Defendants.

ANSWER TO SECOND AMENDED COMPLAINT

Defendants, Buffalo Board of Education, Pamela C. Brown, Will Keresztes, Charles Brandy, Donald Ogilvie, James M Sampson, Carl Paladino, Lawrence Quinn, Patricia Pierce, Theresa Harris-Tigg, and Barbara Seal-Nevegold, all herein after "the District" by their attorney Joel C. Moore, Esq. of counsel to Nathaniel J. Kuzma, Esq., Buffalo Public Schools General Counsel, for their Answer to the Second Amended Complaint, alleges upon information and belief as follows:

1. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 1, 2, 3, 5, 7, 8, 9, 10, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 38(1), 39(1), 40, 42, 43, 56, 69, 71, 73, 74, 75, 76, 78, and 88 of the Second Amended Complaint.

2. Denies the allegations in paragraphs 12, 15, 36, 39(2), 40, 41, 42, 49, 53, 65, 68, 69, 72, 77, 79, 80, 81, 82(1), 83(1), 84(1), 82(2), 83(2), 84(1), 84(2), 85, 86, 87, 89, and 90 of the Second Amended Complaint.

3. With respect to the allegations in paragraphs 4, 6, 11, 13, 16, 44, 45, 46, 47, 48, 50, 51, 52(1), 52(2), 54, 55, 57, 58, 60, 61, 62, 63, 64, 66, 67, 70 of the Second Amended Complaint, admits that Plaintiff has attached documents purporting to be what he describes it to be in each of those aforementioned paragraphs, but denies the remaining allegations in each of those paragraphs.

4. With respect to the allegations in paragraph 59 of the Second Amended Complaint, denies Plaintiff's legal conclusion, and states the law speaks for itself.

5. Denies each and every allegation not specifically addressed above.

6. Denies that the plaintiff is entitled to any damages or any relief sought in the Second Amended Complaint.

DEFENSES

The Second Amended Complaint is presented in conclusory and vague terms, which prevents the District from anticipating all claims and defenses that may be applicable in this action. Thus, the District reserves the right to assert additional defenses that may

become known during the course of discovery or during any other proceeding in this action. Further by setting forth the defenses below, the District does not assume any burden of proof that otherwise does not exist as a matter of law.

FIRST DEFENSE

1. The Second Amended Complaint, in whole or in part, fails to state a cause of action upon which relief may be granted.

SECOND DEFENSE

2. Plaintiff's claims are barred, in whole or in part, for failing to comply with applicable service of process requirements.

THIRD DEFENSE

3. To the extent plaintiff alleges fraud, plaintiff's claims are barred, in whole or in part, because his fraud claim is not plead with particularity.

FOURTH DEFENSE

4. The District treated the plaintiff in good faith and without malice at all times.

FIFTH DEFENSE

5. The statute of limitations bars Plaintiff's claim.

SIXTH DEFENSE

6. Plaintiff's fails to pled with sufficient specificity or particularity.

SEVENTH DEFENSE

7. Plaintiff did not reasonably rely upon any alleged misrepresentations or nondisclosures of material facts made by these answering Defendants; therefore, Plaintiff is barred from seeking any affirmative relief against these answering Defendants.

EIGHTH DEFENSE

8. The District's actions are protected under Governmental immunity.

NINTH DEFENSE

9. Plaintiff's claims are barred, in whole or in part, because the answering Defendants did not cause plaintiff any compensable damages.

TENTH DEFENSE

10. Plaintiff's claims are barred, in whole or in part, because the answering Defendants did not owe, or subsequently breach any duty to plaintiff.

ELEVENTH DEFENSE

11. Plaintiff's claims are barred, in whole or in part, because any alleged injury suffered by plaintiff is not compensable.

TWELFTH DEFENSE

12. Plaintiff's claims are barred, in whole or in part, because any alleged injuries were caused by others whom the answering Defendants had no responsibility or control over.

THIRTEENTH DEFENSE

13. Plaintiff's claims are barred, in whole or in part, because plaintiff lacks capacity, standing, and/or authority to bring his claims.

FOURTEENTH DEFENSE

14. This Court lacks subject matter jurisdiction over some or all of plaintiff's claims.

FIFTEENTH DEFENSE

15. To the extent plaintiff alleges conspiracy, plaintiff's claims are barred, in whole or in part, because plaintiff has not set forth the requisite predicate acts leading to a charge of conspiracy.

SIXTEENTH DEFENSE

16. Plaintiff's claims are barred, in whole or in part, because any allegation of the answering Defendants' potentially culpable conduct was not the cause of plaintiff's alleged injury.

SEVENTEENTH DEFENSE

17. Plaintiff's claims are barred due to the Unclean Hands Doctrine

EIGHTEENTH DEFENSE

18. Plaintiff's has failed to exhaust all administrative remedies.

WHEREFORE, the District demands judgment dismissing the Second Amended Complaint in its entirety, together with reasonable costs and attorney's fees, and such other and further relief as this Court seems just and proper.

Dated: Buffalo, New York
July 31, 2018

Nathaniel J. Kuzma
General Counsel

BY: /s/
JOEL C. MOORE
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CHARLES BURGIN,

Plaintiff,

v.

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BUFFALO BOARD OF EDUCATION et al.

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2018, I electronically filed the Notice of Motion, the Declaration of Joel C. Moore, the Buffalo Public School District's Memorandum of Law, Affidavit of Jaime L. Cohen, and Statement of Facts with the Clerk of the District Court using its CM/ECF system and thereby provided service on the following CM/ECF participant:

JOSEPH S. BROWN
Attorney for Nathan L. Hare
140 Pearl Street, Suite 100
Buffalo, NY 14202
(716) 856-4000
JSBROWN@hodgsonruss.com

And, I hereby certify that I have mailed the foregoing, by the United States Postal Service, to the following non-CM/ECF participants:

CHARLES BURGIN
Pro Se
22 Bennett Village Terrace
Buffalo, New York 14214

Date: July 31, 2018
Buffalo, New York

Nathaniel J. Kuzma
General Counsel

BY:

/s/
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Assistant Legal Counsel
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